

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on October 15, 2009. A Petition for a one month extension of time is submitted herewith this Amendment. The Director is authorized to charge \$130.00 for the Petition for a one month extension of time and any additional fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00665 on the account statement.

Claims 1-32 are pending in this application. In the Office Action, Claims 4 and 15-17 are rejected under 35 U.S.C. §112. Claims 1, 18-21 and 26-32 are rejected to under 35 U.S.C. §102. In response, Applicants have amended Claim 1, have canceled Claims 2-17 and 22-25 without prejudice or disclaimer and have newly added Claims 33-52. Neither the amendments nor the newly added claims add new subject matter. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully request that the rejections be reconsidered and withdrawn.

In the Office Action, the Patent Office asserts that Claims 2-3, 5-14 and 22-25 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Patent Office also states that Claims 4 and 15-17 would be allowable if rewritten to overcome the rejections under 35 U.S.C. §112, second paragraph. See, Office Action, page 3, lines 4-9. Accordingly, Claims 33-52 have been newly added and include the subject matter of previous Claims 2-17 and 22-25. As such, Claims 33-52 do not add new matter and Claims 2-17 and 22-25 have been canceled without prejudice or disclaimer.

Accordingly, Applicants respectfully submit that Claims 33-52 are novel, nonobvious and are in position for allowance.

In the Office Action, Claims 4 and 15-17 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Patent Office states that Claim 4 does not have proper antecedent basis for the phrase "the opening through the seal." See, Office Action, page 2, lines 6-9. In response, Applicants note that newly added Claim 35 recites, in part, "an opening through the seal" and that Claim 4 is presently canceled, the subject matter of which is now included in newly added Claim 35. For at least the reasons set forth above, Applicants submit that Claim 35 fully complies with the requirements under 35 U.S.C. §112, second paragraph, and that the rejection of Claims 4 and 15-17 is now rendered moot.

Accordingly, Applicants respectfully request that the rejection of Claims 4 and 15-17 be reconsidered and withdrawn.

In the Office Action, Claims 1, 18-21 and 26-32 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,698,333 to Halliday et al. ("*Halliday*"). However, Applicants respectfully submit that *Halliday* is deficient with respect to the present claims.

Currently amended independent Claim 1 recites, in part, a disposable packaging for dispensing at least one preparation from at least one pumpable liquid comprising at least one closed compartment containing the pumpable liquid and having a passage formed therein for accepting an aspiration and mixing subassembly of a venturi type, and means for sealing the packaging. The amendment does not add new matter. The amendment is supported in the specification at, for example, paragraph 19. Independent Claim 20 recites, in part, a disposable packaging comprising a passage designed to accommodate withdrawing means, said seal being able to be undone in a determined region so as to place the inside of the packaging in communication with said withdrawing means when said withdrawing means are introduced into said passage without the withdrawing means entering the packaging. Independent Claim 21 recites, in part, a method for producing and dispensing a preparation hygienically, using a disposable packaging comprising at least one pumpable liquid contained in at least one compartment of the packaging and comprising the steps of opening the packaging by placing the compartment in communication with a venturi-type means and using a pressurized fluid and a vacuum effect to aspirate the liquid from the compartment into the venturi-type means, which is in communication with a heated pressurized fluid.

The presently claimed disposable packages and methods of using same provide novel packages that make it possible to more quickly and more easily heat and also, at the same time, froth a pumpable preparation such as a food liquid under better hygienic and economic conditions. The froth obtained is uniform in quality and in quantity without requiring modifications to an espresso coffee machine that generates pressurized steam, or any other machine that generates fluid fed into the chamber of the venture-effect device. See, specification, paragraphs 16-17. In contrast, Applicants respectfully submit that *Halliday* is deficient with respect to the present claims.

With respect to Claim 1, *Halliday* fails to disclose or suggest a disposable packaging for dispensing at least one preparation from at least one pumpable liquid comprising at least one closed compartment containing the pumpable liquid and having a passage formed therein for

accepting an aspiration and mixing subassembly of a venturi type, and means for sealing the packaging. Instead, *Halliday* is entirely directed to a cartridge for the preparation of whipped beverages wherein an air inlet is connected from the outside of the cartridge which is at atmospheric pressure to the chamber or conduit opening where the pressure reduction of the beverage occurs. See, *Halliday*, Abstract. As is clearly shown by all of the figures in *Halliday*, the compartment 9 does not have a passage formed therein for accepting an aspiration and mixing assembly of a venture type. Indeed, the Patent Office clearly identifies the means for accepting the aspiration and mixing subassembly as numbers 15-18 in the figures of *Halliday* – all of which are clearly located outside of and a distance from the compartment 9. See, Office Action, page 2, lines 25-26; *Halliday*, Figure 1. Accordingly, *Halliday* fails to disclose or suggest each and every element of independent Claim 1.

With respect to independent Claim 20, *Halliday* fails to disclose or suggest a disposable packaging comprising a passage designed to accommodate withdrawing means, said seal being able to be undone in a determined region so as to place the inside of the packaging in communication with said withdrawing means when said withdrawing means are introduced into said passage without the withdrawing means entering the packaging. For at least the same reasons discussed above, *Halliday* fails to disclose or suggest a disposable packaging comprising a passage designed to accommodate withdrawing means. Additionally, since *Halliday* fails to disclose or suggest a passage in the package for receiving the withdrawing means, *Halliday* must also fail to disclose or suggest a seal that is able to be undone in a determined region so as to place the inside of the packaging in communication with said withdrawing means when said withdrawing means are introduced into said passage without the withdrawing means entering the packaging. Instead, and as discussed above, the compartment 9 of *Halliday* does not have a passage formed therein for accepting an aspiration and mixing assembly of a venture type. Indeed, the Patent Office clearly identifies the means for accepting the aspiration and mixing subassembly as numbers 15-18 in the figures of *Halliday* – all of which are clearly located outside of and a distance from the compartment 9. See, Office Action, page 2, lines 25-26; *Halliday*, Figure 1. Accordingly, *Halliday* fails to disclose or suggest each and every element of independent Claim 20.

Regarding independent Claim 21, *Halliday* fails to disclose or suggest a method for producing and dispensing a preparation hygienically, using a disposable packaging comprising at least one pumpable liquid contained in at least one compartment of the packaging and

comprising the steps of opening the packaging by placing the compartment in communication with a venturi-type means and using a pressurized fluid and a vacuum effect to aspirate the liquid from the compartment into the venturi-type means. Instead, the mixture of *Halliday* is forced to leave the compartment 9 by a positive pressure provided in the compartment. Indeed, *Halliday* specifically states that “the water mixes with the beverage preparation ingredients contained within compartment 9 and is forced upwardly through the beverage preparation ingredients. The beverage formed by passage of water through the beverage preparation ingredients passes through the filter material 10 into a plurality of passages which are formed between ribs 12 onto which the filter paper is sealed.” *Halliday* further states that the “beverage collected via the passages 11 is funneled in area 14” and that “[t]he beverage is forced under pressure through the restriction hole by the back pressure of the beverage collecting in the areas 14 and 15.” See, *Halliday*, column 5, lines 45-67.

Thus, it is clear that the compartment 9 and the collection space 15 of *Halliday* are emptied using a positive pressure provided by the liquids. The mixture of *Halliday* is not aspirated from the compartment using a pressurized fluid and a vacuum effect as is required, in part, by independent Claim 21. Applicants submit that any arguable venturi effect in *Halliday* is not used to pump liquid, but to draw air into the mixture when pressurized through the outlet to provide fine bubbles. Accordingly, the packages of *Halliday* operate in a manner that is completely distinguishable from the present claims and *Halliday* fails to disclose or suggest each and every element of independent Claim 21.

Further, anticipation is a factual determination that “requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v. Barent, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found. Because *Halliday* fails to disclose each and every element of the present claims, *Halliday* fails to anticipate the present claims.

For at least these reasons, Applicants respectfully submit that *Halliday* fails to anticipate the presently claimed subject matter.

Accordingly, Applicants respectfully submit that the anticipation rejection with respect to Claims 1, 18-21 and 26-32 be reconsidered and withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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